



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 13-6

June 28, 2013

Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252

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**HEARING OFFICER RULING ON PETITIONS FOR INTERVENTION, REQUEST  
FOR LIMITED PARTICIPANT STATUS, MOTION FOR ADMISSION *PRO HAC VICE*,  
MOTION FOR CONFIDENTIAL TREATMENT, NON-DISCLOSURE AGREEMENTS,  
AND THE OTHER PARTY TO THE AGREEMENT**

**I. INTRODUCTION**

In this ruling, the Department of Telecommunications and Cable (“Department”) addresses a number of procedural issues that have arisen in the above captioned proceeding. For the reasons discussed below, the Department grants: (1) the three petitions to intervene requesting party status; (2) the petition to intervene requesting limited participant status; (3) a motion for admission *pro hac vice*; and (4) a motion for confidential treatment. In addition, the Department directs intervenors, seeking access to documents submitted by Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) and granted confidential treatment, to negotiate non-disclosure agreements with Verizon MA. The Department also directs Verizon MA to notify the unidentified party (“Other Party”) to the agreement at issue in the proceeding of its potential rights by serving a copy of all documents submitted in this proceeding on Other Party.

**II. BACKGROUND**

On May 13, 2013, the Department, as part of an investigation upon its own motion, directed Verizon MA to provide for Department review the agreement (“IP Agreement”) between itself and Other Party providing for the exchange of Voice over Internet Protocol (“VoIP”) traffic in Internet Protocol (“IP”) format. *Investigation by the Dep’t of Telecomms. & Cable on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Mass. is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Dep’t for Approval in Accordance with 47 U.S.C. § 252, D.T.C. 13-6, Order Opening an Investigation, Declining to Issue an Advisory Ruling, and Denying Verizon MA’s Motion to Dismiss or Stay the Proceeding* (May 13, 2013) (“*Order Opening Investigation*”). The purpose of the investigation is to determine whether the IP Agreement is an “Interconnection Agreement” under 47 U.S.C. § 251. *Order Opening Investigation* at 1-2. And, if the IP Agreement is an Interconnection Agreement, Verizon MA would be required to file it with the Department for approval pursuant to 47 U.S.C. § 252(e). *Id.*

**A. Motions to Intervene of Competitive Carriers, Level 3, Sprint, and CenturyLink and Sprint’s Motion for Admission *Pro Hac Vice*.**

Since the Department opened its investigation, four separate carriers (or groups of carriers) filed motions to intervene. On May 21, 2013, CTC Communications Corp., d/b/a EarthLink Business; Lightship Telecom, LLC, d/b/a EarthLink Business; Choice One Communications of Massachusetts, Inc., d/b/a EarthLink Business; Conversent Communications of Massachusetts, Inc., d/b/a EarthLink Business; EarthLink Business, LLC (formerly New Edge Network, Inc., d/b/a EarthLink Business); Cbeyond Communications, LLC; and tw data services llc (collectively, the “Competitive Carriers”) filed a petition to intervene requesting party status (“Competitive Carriers’ Petition”). On May 24, 2013, Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel Communications of the Mid-Atlantic, Inc., and Virgin Mobile

USA, L.P. (collectively “Sprint”) filed a petition to intervene requesting party status (“Sprint Petition”) and a motion for admission of Benjamin J. Aron *pro hac vice*. On June 3, 2013, Level 3 Communications, LLC (“Level 3”) filed a petition to intervene requesting party status (“Level 3 Petition”). On June 6, 2013, Qwest Communications Company, LLC d/b/a CenturyLink QCC (“CenturyLink”) filed a petition to intervene requesting limited participant status (“CenturyLink Petition”). No party has opposed any of these motions.

**B. Verizon’s Motion for Confidential Treatment**

When the Department opened this docket, it directed Verizon MA to submit a copy of the IP Agreement to the Department on or before June 3, 2013. *Order Opening Investigation* at 14. Verizon MA, in response to the Department’s directive, submitted documents with a motion for their confidential treatment on May 30, 2013 (“May 30 Documents”).<sup>1</sup>

**III. ANALYSIS**

**A. The Department Grants the Petitions to Intervene of the Competitive Carriers, Sprint, Level 3, and CenturyLink and Grants Sprint’s Motion for Admission *Pro Hac Vice*.**

The Department finds that each of the petitioners meet the requirements of 220 C.M.R. § 1.03(1)(b) and G. L. c. 30A, § 10, and allows the motions to intervene. Although Verizon MA has not opposed the petitioners’ intervention, the Department nevertheless conducts an independent analysis of whether granting the intervention motions is appropriate. A petition to intervene must satisfy the substantive requirements of 220 C.M.R. § 1.03(1). Petitioners must establish that they are “substantively and specifically affected by the proceeding.” 220 C.M.R. § 1.03(1)(b); G. L. c. 30A § 10. The Department has broad discretion in determining whether to

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<sup>1</sup> Documents filed with the Department contemporaneously with a motion for confidential treatment are treated confidentially pending a final determination on the motion. *See Pet. of Cox Com, Inc. d/b/a Cox Commc’ns New England to Establish & Adjust the Basic Serv. Tier* (“Cox Rate Case”), D.T.C. 10-10, *Rate Order* at n.4 (Oct. 12, 2011).

grant petitions to intervene. *See, e.g., Pet. of Comcast Cable Commc'ns., LLC to establish & adjust the basic service tier programming, equipment, & installation rates for the communities in Mass. served by Comcast Cable Commc'ns., LLC that are currently subject to rate regulation*, D.T.C. 12-2, *Hr'g Officer Ruling on Pet. to Intervene* (Nov. 14, 2012) (municipality was not substantively and specifically affected by Department proceeding to reconsider basic cable rates where municipality was not subject to rate regulation.); *Investigation by the Dep't on its Own Motion into the Implementation in Mass. of the FCC's Order Reforming the Lifeline Program*, D.T.C. 13-4, *Hr'g Officer Ruling on Pets. for Intervention, Requests for Limited Participation Status, and Motion for Admission Pro Hac Vice* (providers of service under federal Lifeline program were substantively and specifically affected by Department investigation into a federal order reforming the program).

Each of the petitioners is a competitive telecommunications provider registered with the Department and each offers telecommunications services and IP-enabled services in Massachusetts. Competitive Carriers' Petition at 1-2; Sprint Petition at 2; Level 3 Petition at 1. As a result, each petitioner will be substantively and specifically affected by this proceeding, because if the Department finds that the IP Agreement is an Interconnection Agreement the Competitive Carriers, Sprint, and Level 3, as providers of telecommunications services and IP-enabled services, such as VoIP, would be entitled, pursuant 47 U.S.C. § 252(i), to request to enter into agreements with Verizon MA on the same terms and conditions as provided in the IP Agreement.<sup>2</sup> *Compare Pet. of Comcast Cable Commc'ns., LLC to establish & adjust the basic service tier programming, equipment, & installation rates for the communities in Mass. served*

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<sup>2</sup> 47 U.S.C. § 252(i) provides that, "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

*by Comcast Cable Commc'ns., LLC that are currently subject to rate regulation, D.T.C. 12-2, Hr'g Officer Ruling on Pet. to Intervene* (Nov. 14, 2012) (based on individual facts of the proceeding municipality was not substantively and specifically affected by Department proceeding).

Under 220 C.M.R. § 1.03(1)(e), the Department may permit nonparties to make limited appearances by making oral or written statements of their positions on the issue, or by such other participation as it may determine. In its petition to intervene requesting limited participant status, CenturyLink seeks the right “to argue orally at the close of a hearing, submit briefs and file a response to any dispositive motion[.]” CenturyLink Petition at 2. Verizon MA has not opposed CenturyLink’s Petition.

When ruling on a petition to intervene, the Department balances the interests of an individual intervenor against the need to conduct an efficient proceeding. *Boston Edison Co. v. Dep’t of Pub. Utils.*, 375 Mass. 1, 45-46 (1978). It may consider, among other factors, the interests of the petitioner, whether the petitioner’s interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner’s intervention on the proceeding, and the nature of the petitioner’s evidence, including whether such evidence will elucidate the issues of the proceeding, and may limit intervention and participation accordingly. *Pet. of Comcast Cable Commc'ns., LLC to establish & adjust the basic service tier programming, equipment, & installation rates for the communities in Mass. served by Comcast Cable Commc'ns., LLC that are currently subject to rate regulation, D.T.C. 12-2, Hr'g Officer Ruling on Pet. to Intervene* at 10 (Nov. 14, 2012). The Department exercises the discretion afforded to it under G. L. c. 30A, § 10, so that it may conduct a proceeding with the goal of issuing a reasoned, fair, impartial, and timely decision that achieves its statutory

mandate. *Pets. of W. Mass. Elec. Co. for approval of its Transition Charge Reconciliation filing for the periods Jan. 1, 2000 through Dec. 31, 2000 & Jan. 1, 2001 through Dec. 31, 2001.*

D.T.E. 01-36/D.T.E. 02-20, *Interlocutory Order on Appeal of Hr’g Officer Ruling Denying Alternate Power Source, Inc.’s Pet. to Intervene* at 6 (Jan. 31, 2003).

CenturyLink as a telecommunications provider in Massachusetts may be affected by the outcome of this proceeding. CenturyLink claims the outcome of this proceeding may affect its future operations in Massachusetts and has a significant interest in the regulatory status of IP interconnection. CenturyLink Petition at 1. Because CenturyLink's future operations may be affected by the outcome of this proceeding and its participation is unlikely to affect the Department’s ability to conduct an efficient proceeding and potentially could help the Department issue a reasoned, fair, impartial, and timely decision, the Department grants CenturyLink limited participant status, with the rights requested. *See Pet. of Comcast Cable Commc’ns., LLC to establish & adjust the basic service tier programming, equipment, & installation rates for the communities in Mass. served by Comcast Cable Commc’ns., LLC that are currently subject to rate regulation*, D.T.C. 12-2, *Hr’g Officer Ruling on Pet. to Intervene* at 10 (Nov. 14, 2012).

On May 24, 2013, Sprint filed simultaneously with its motion to intervene a motion for admission of Benjamin J. Aron *pro hac vice* to represent Sprint in this proceeding. No party has opposed the motion. Sprint asserts Mr. Aron works for Sprint as Counsel representing Sprint in numerous proceedings before various state commissions, he a member in good standing of the bars of Maryland and the District of Columbia, is authorized as a Corporate Counsel in Virginia, and has appeared *pro hac vice* before the Department previously. Sprint Motion for Admission

of Benjamin J. Aron *Pro Hac Vice* at 1-2. The Department grants Sprint's motion for admission of Benjamin J. Aron *pro hac vice*.

**B. The Department Grants Verizon MA's Motion for Confidential Treatment.**

The Department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings. G. L. c. 25C, § 5. For the reasons discussed below, the Department grants Verizon MA's motion for confidential treatment.

All documents and data received by the Department are generally considered public records and, therefore, are to be made available for public review under a general statutory mandate. *See* G. L. c. 66, § 10; G. L. c. 4, § 7(26). "Public records" include "all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the [C]ommonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose unless such materials or data fall within [certain enumerated] exemptions." G. L. c. 4, § 7(26). Materials that are "specifically or by necessary implication exempted from disclosure by statute" are excluded from the definition of "public records." G. L. c. 4, § 7(26)(a).

G. L. c. 25C, § 5 permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. *See* G. L. c. 66, § 10; G. L. c. 4, § 7(26). Specifically, G. L. c. 25C,

§ 5 is an exemption recognized by G. L. c. 4, § 7(26)(a) (“specifically or by necessary implication exempted from disclosure by statute”).

Information filed with the Department may be protected from public disclosure pursuant to G. L. c. 25C, § 5, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

G. L. c. 25C, § 5 establishes a three-prong standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be granted confidential treatment. First, the information for which confidential treatment is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information.” Second, the party seeking confidential treatment must overcome the G. L. c. 66, § 10 statutory presumption that all such information is public information by “proving” the need for its non-disclosure. Third, even where a party proves such need, the Department may grant confidential treatment to only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. *See* G. L. c. 25C, § 5. *See Investigation by the Dep’t of Telecomms. & Energy on its own Mot. into the Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Mass. Intrastate Retail Telecomms. Servs. in the Commw. of Mass.*, D.T.E. 01-31, Phase I, *Hr’g Officer Ruling on Verizon Mass. Mots. for Confidential Treatment*, (2001) (citing G. L. c. 25, § 5D, the prior applicable standard, which contains the same language as G. L. c. 25C, § 5).



- i. *The Information for which Confidential Treatment is sought constitutes Trade Secrets, Confidential, Competitively Sensitive, or Other Proprietary Information.*

With regard to the first requirement of the confidential treatment standard, Verizon MA contends that the information within the May 30 Documents constitutes confidential, competitively sensitive, proprietary information. Verizon MA Motion for Confidential Treatment at 2. There is no general rule as to whether information is confidential, it depends upon the nature of the information and the conduct of the parties, but the Massachusetts courts have utilized six factors in conducting an inquiry into whether information is confidential: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the employer to guard the secrecy of the information; (4) the value of the information to the employer and its competitors; (5) the amount of effort or money expended by the employer in developing the information; and (6) the ease or difficult with which the information could be properly acquired or duplicated by others.<sup>3</sup> See *Jet Spray Cooler, Inc. v. Crampton*, 361 Mass. 835, 840 (1972) (citing the Restatement of Torts, s 757, comment b).

The Department, in considering whether information constitutes confidential, competitively sensitive, or other proprietary information, gives considerable weight to “the value of the information to the employer and its competitors” factor; specifically whether the public

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<sup>3</sup> Verizon MA characterizes this test as determining whether certain information qualifies as a “trade secret.” Verizon MA Motion for Confidential Treatment at 1. However, the Court was not identifying elements of a “trade secret,” rather the court was acknowledging elements to consider when determining whether information alleged to be a “trade secret” is in fact and in law confidential information. See *Jet Spray Cooler, Inc. v. Crampton*, 361 Mass. at 840 (1972); *Augat, Inc. v. Aegis, Inc.* 409 Mass. 165, 169-170 (1991) (using *Jet Spray Cooler, Inc.* factors to determine whether information, that was not a trade secret is confidential); *Warner-Lambert Co. v. Execuquest Corp.*, 427 Mass. 46, 48-49 (1998)(using *Jet Spray Cooler Inc.* factors to determine whether information that is not a trade secret is in fact and in law confidential); *Harvard Apparatus, Inc. v. Cowen*, 130 F. Supp. 2d 161, 177 (Mass. 2001) (denying summary judgment on a claim of improper use of confidential and business proprietary information, noting that the SJC utilizes the *Jet Spray Cooler, Inc.*, six factors to determine whether information is confidential).

release of the information could expose a company to a competitive disadvantage. *See Complaint of One Commc'ns* at 11; *Cox Rate Review* at 4-5; *Pet. of YourTel Am., Inc. for Designation as an Eligible Telecomms. Carrier*, D.T.C. 11-1, *Hr'g Officer's Ruling on Mot. for Protection from Public Disclosure*, at 5 (2011) ("*YourTel Pet.*"); *Investigation by the Dep't of Telecomms & Energy on its own Mot., pursuant to G. L. c. 159, §§ 12, 16, into the collocation security policies of Verizon New England Inc. d/b/a Verizon Mass.*, D.T.E. 02-8, *Order* at 10 ("*Verizon Collocation Security Policies*"); *Investigation by the Dep't of Telecomms. & Energy on its own Mot. into the Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Mass. Intrastate Retail Telecomms. Servs. in the Commw. of Mass.*, D.T.E. 01-31, Phase I, *Interlocutory Order on Verizon Mass. Appeal of Hr'g Officer's Ruling Denying Mot. for Protective Treatment*, at 7, 9 (2001) ("*D.T.E. 01-31, Phase I, Interlocutory Order*").

In support of its contention that the information in the May 30 Documents is confidential, Verizon MA states that: the documents contain terms for the exchange of traffic in IP format; the information is highly valuable to Verizon MA; Verizon MA and Other Party to the agreement have agreed that such terms are confidential; and disclosure of the terms would confer a valuable business advantage on competitors in potential future contract negotiations with Verizon MA. Verizon MA Motion for Confidential Treatment at 2-3. Specifically, with regard to competitive harm, Verizon MA claims, "knowledge of specific terms on which Verizon is willing to exchange traffic with one carrier in IP format would confer a valuable business advantage on other carriers (Verizon MA's competitors) who may also seek to exchange traffic in IP format – namely, a leg up in contract negotiations with Verizon MA." Verizon MA Motion for Confidential Treatment at 3.

The Department agrees that disclosure of the May 30 Documents could potentially give competitors a negotiation advantage over Verizon MA. In determining whether the May 30 Documents constitute an interconnection agreement requiring Department approval pursuant to 47 U.S.C. § 252, the Department is also determining whether Verizon MA must make available any interconnection, service, or network element provided under the agreement to a requesting telecommunications carrier on the same terms and conditions provided in the agreement. *See* 47 U.S.C. § 252(i). Unless the May 30 Documents are found to be interconnection agreement subject to 47 U.S.C. § 252, they are not subject to public disclosure. Therefore, pending the Department determination on the ultimate issue of whether the agreement between Verizon MA and Other Party is an interconnection agreement, the Department is satisfied that the information in the May 30 Documents constitutes confidential, competitively sensitive, or otherwise proprietary information.

*ii. Verizon MA Must Prove the Need for Non-Disclosure.*

Turning to the second prong of its confidential treatment analysis, the Department is required to disclose information in its possession unless the moving party overcomes the presumption that the information is public by proving the need for protection from public disclosure. G. L. c. 25C, § 5; *D.T.E. 01-31 Phase I, Interlocutory Order* at 7. “[T]he proponent of a request for confidential treatment has the burden to prove why confidential treatment is warranted. Although the Department does not seek to place parties at a competitive disadvantage by disclosing information that is truly competitively sensitive, it is constrained by public disclosure requirements, upon receipt of a proper G. L. c. 66, [§] 10 request, absent the

proper showing of compliance with [G. L. c. 25C, § 5].”<sup>4</sup> *Pets. of MediaOne Telecomms. of Mass. Inc. & New England Tel. & Tel. Co. d/b/a Bell Atlantic-Mass. for arbitration, pursuant to § 252(b) of the Telecomms. Act of 1996 to establish an interconnection agreement; Pet. of Greater One Media Mass. for arbitration, pursuant to § 252(b) of the Telecomms. Act of 1996 to establish an interconnection agreement with New England Tel. & Tel. Co. d/b/a Bell Atlantic-Mass.*, D.T.E. 99-42/43, D.T.E. 99-52, *Order*, at 52 n.31 (2000).

In determining the need for confidential treatment, the Department has long held it will not automatically grant requests for confidential treatment stating, “[c]laims of competitive harm resulting from public disclosure, without further explanation, have never satisfied the Department’s statutory requirement of proof of harm.” *See Cox Rate Review* at 3 (citing *AT&T Broadband/Verizon Interconnect Agreement*, D.T.E. 99-42/43, 99-52, at 52 n.31 (2000) and *D.T.E. 01-31 Phase I, Interlocutory Order* at 7). The Department must balance the moving party’s proof against the presumption in favor of disclosure, and the specific reasons that disclosure of the information benefits the public interest. *Mot. for Protective Treatment by Verizon Mass. Regarding Customer Specific Pricing Contracts*, D.T.C. 08-11, *Order* at 8 (2009); *Tracfone Wireless Inc., Annual Verification of Safelink Wireless Lifeline Subscribers*, D.T.C. 09-9, *Order* at 10-11 (2010).

In considering whether a moving party has met its statutory burden, the Department couples its finding as to whether the information constitutes trade secrets, confidential, competitive sensitive, or other proprietary information, with an evaluation of the measures the moving party has taken to protect the confidentiality of the information for which it seeks protection. *See YourTel Pet.* at 5; *Cox Rate Review* at 5; *Complaint of One Commc’ns* at 10;

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<sup>4</sup> Chapter 25C, § 5 is identical to the statute applicable to the D.T.C. predecessor agency, the D.T.E. *See* G. L. c. 25, § 5D. Accordingly, the precedent and standard of review, under G. L. c. 25, § 5D, developed by the former D.T.E. and applied on motions for confidentiality in D.T.C. matters are applicable here.

*D.T.E. 01-31, Phase I, Interlocutory Order at 9; Application of BLC Mgmt., LLC d/b/a Angles Commc'n Solutions for Certification as an Eligible Telecomms. Carrier, D.T.C. 09-2, Order at 7 (2010); Pet. of Time Warner Cable for Renewal of FCC Forms 1240 & Form 1205 for the Great Barrington, North Adams, & Pittsfield Systems, D.T.C. 08-14, Hr'g Officer's Ruling on Mot. for Protective Order at 5-6 (2010).* The Department also considers the extent to which it has previously protected similar information. *See Verizon Collocation Security Policies at 10-11.*

Verizon MA asserts that the information in the May 30 Documents is “highly valuable to Verizon MA, and Verizon MA and the other party to the agreement have agreed that such terms are confidential and shall not be disclosed to others.” Verizon MA Motion for Confidential Treatment at 3. A party’s willingness to enter into a non-disclosure agreement with other parties does not resolve conclusively the question of whether asserted confidential information should be granted protective treatment by the Department. *See Investigation by the Dept. of Telecomms. & Energy, on its own motion, into Boston Elec. Co.’s Compliance with the Dept.’s Order in D.P.U. 93-37, D.T.E. 97-95, Interlocutory Order at 15 (July 2, 1998).* However, the Department accepts Verizon MA’s assertion that the May 30 Documents are treated as confidential and that Verizon MA engages in practices to prevent disclosure of the information to third parties. Further, the Department acknowledges that in determining whether the information in the May 30 Documents constitute an interconnection agreement under 47 U.S.C. § 252, the Department is making a determination whether Verizon MA is statutorily obligated to make the terms of its agreement available to other telecommunications services providers. *See 47 U.S.C. § 252(i).* Until the Department reaches a final determination, protection of the information from disclosure is warranted and, on balance, the need to protect the information from disclosure outweighs the public interest in disclosing the information.

*iii. Scope of Protection from Public Disclosure.*

In considering the third prong of its confidential treatment standard, the Department is required to limit confidential treatment to only so much of the information and for only the length of time necessary to meet the established need. G. L. c. 25C, § 5. Verizon MA requests the Department to grant the May 30 Documents confidential treatment at least until it makes a determination as to whether or not the information in the May 30 Documents contains an interconnection agreement subject to state commission approval pursuant to 47 U.S.C. § 252. Verizon MA Motion for Confidential Treatment at 3. The Department finds it reasonable to grant the May 30 Documents confidential treatment pending Department completion of its investigation and a final determination as to whether the agreement between Verizon MA and Other Party is an interconnection agreement. *Compare Investigation by the Dep't of Telecomms. & Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass., D.T.C. 06-61, Final Order* (Oct. 17, 2012) (limiting the length of confidential treatment because the risk of competitive harm from disclosure decreases over time, but allowing affected parties an opportunity to renew the request for confidential treatment). .

**C. The Department Directs Intervenors Seeking Access to Verizon MA's May 30 Documents to Negotiate Non-Disclosure Agreements with Verizon MA.**

Verizon MA requests that if the Department affords the May 30 Documents confidential treatment, it should limit disclosure to intervenors that have entered into an appropriate confidentiality agreement with Verizon MA. In a Department proceeding where information has been granted confidential treatment, intervenors typically sign mutually acceptable non-disclosure agreements giving rights of access to and use of information and then submit such

agreements to the Department. *See Investigation by the Dep't of Telecomms. & Energy, on its own motion, into Boston Edison Company's compliance with the Dep't's Order in D.P.U. 93-37, D.T.E. 97-95, Interlocutory Order on: (1) Motion for Order on Burden of Proof; (2) Proposed Nondisclosure Agreement; and (3) Requests for Protective Treatment at 9 (July 2, 1998).* The Department requires a non-disclosure agreement to balance the concerns of protecting information granted confidential treatment with the concerns of protecting the administrative procedural rights of intervenors to acquire information from each other in order to participate meaningfully in an adjudicatory proceeding. *See Investigation by the Dep't of Telecomms. & Energy, on its own motion, into Boston Edison Company's compliance with the Dep't's Order in D.P.U. 93-37, D.T.E. 97-95, Interlocutory Order on: (1) Motion for Order on Burden of Proof; (2) Proposed Nondisclosure Agreement; and (3) Requests for Protective Treatment at 9 (July 2, 1998).; Investigation by the Dep't of Telecomms. & Energy on its own motion, pursuant to G. L. c. 159, §§ 12 and 16, into the collocation security policies of Verizon New England Inc. d/b/a Verizon Mass., D.T.E. 02-8, Order at 12 (May 25, 2005).*

The Department directs any intervenor seeking access to the May 30 Documents to negotiate terms of a mutually acceptable non-disclosure agreement with Verizon MA, and to submit said agreement to the Department.

**D. Verizon MA Shall Notify Other Party of this Proceeding and its Potential Ability to Intervene.**

Verizon MA indicates that the May 30 Documents “set forth terms regarding the exchange of traffic in Internet Protocol format between Verizon and another carrier” and that “Verizon MA and the other party to the agreement have agreed that such terms are confidential and shall not be disclosed to others.” Verizon MA Motion for Confidential Treatment at 2-3. While the identity of Other Party is revealed in the May 30 Documents, it remains publicly

undisclosed. As a signatory to the agreement with Verizon MA, the Other Party's legal rights, duties, or privileges are being determined in this proceeding. The Department is mindful Other Party may be entitled to party status.

The Department seeks to verify that Other Party receives notice of this proceeding and its ability to seek to intervene, but at the same time recognizes that the Other Party may not want public disclosure of its identity. Therefore, the Department directs Verizon MA to serve on Other Party, the Department's *Order Opening Investigation*, and all subsequent documents published in docket D.T.C. 13-6, up to and including this Ruling, within seven days of the date of this Ruling. Following service of the documents, the Department directs Verizon MA to submit a notice of compliance to the Department. The Department in balancing the interests of Other Party against the need to conduct an efficient hearing establishes a deadline of 14 days from receipt of service by Verizon MA for Other Party to file with the Department a petition to intervene in this proceeding.

#### **IV. CONCLUSION AND RULING**

The Department GRANTS the petitions to intervene requesting party status of the Competitive Carriers, Sprint, and Level 3. The Department GRANTS the petition to intervene requesting limited participant status of CenturyLink. The Department GRANTS Sprint's motion for admission *pro hac vice* of Benjamin J. Aron in this proceeding. The Department GRANTS Verizon MA's motion for confidential treatment, as detailed herein. The Department DIRECTS any intervenor requesting access to information granted confidential treatment in this proceeding to enter into a mutually acceptable confidential or non-disclosure agreement. The Department DIRECTS Verizon MA to serve a copy of the *Order Opening Investigation*, and all subsequent documents published in docket D.T.C. 13-6 up to and including this Ruling on Other Party



within seven days of the date of this Ruling. The Department also DIRECTS Verizon MA to submit a notice of compliance with the Department following service of the documents. Finally, the Department ESTABLISHES a deadline of 14 days of receipt of service by Verizon MA for Other Party to file with the Department a petition to intervene in this proceeding.

/s/ Betsy S. Whittey  
Betsy S. Whittey  
Hearing Officer

/s/ Michael Scott  
Michael Scott  
Staff Attorney, Legal Division

#### NOTICE OF RIGHT TO APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.